IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

WP(C).No. 25753 of 2006(N)

(AGAINST THE JUDGMENT IN CMA 8/05 OF THE SUB COURT, NEYYATTINKARA DATED 31/07/06 AND AGAINST THE ORDER IN I.A.2522/04 & 2523/04 IN O.S.883/02 OF THE PRINCIPAL MUNSIFF COURT, NEYYATTINKARA DATED 24/01/2005)

PETITIONERS:

1. **KUMARI YASAREE, D/O. DEVAKI, S.J. BHAVAN, VETTAMANGALAM, OORUTTAMBALAM, MARANALLOOR, NEYYATTINKARA TALUK.**

2. **S.J. SUDHEESH (MINOR) 17 YEARS, S.J. BHAVAN, VETTAMANGALAM, OORUTTAMBALAM, MARANALLOOR, NEYYATTINKARA TALUK.**

3. **S.J. JAYESH (MINOR) 15 YEARS, S.J. BHAVAN, VETTAMANGALAM, OORUTTAMABALM, MARANALLOOR, NEYYATTINKARA TALUK.**

(PETITIONERS 2 & 3 ARE MINORS AND THEY ARE REPRESENTED BY THE 1ST PETITIONER WHO IS THEIR MOTHER).

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS:

RAMACHANDRAN NAIR, S/O. ACHUTHAN PILLAI, RAMACHANDRA VILASOM, OORUTTAMBALAM, MARANALLOOR, NEYYATTINKARA TALUK.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.25753/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PETITION I.A.NO.2522/04 IN O.S.NO.883/02 FILED BY THE PETITIONERS BEFORE THE PRINCIPAL MUNSIFF, NEYYATTINKARA DATED 6/06/2004.**

EXT.P2: **COPY OF THE PETITION I.S.NO.2523/04 IN O.S.NO.883/02 FILED BY THE PETITIONERS BEFORE THE PRINCIPAL MUNSIFF, NEYYATTINKARA DTD. 10/06/2004.**

EXT.P3: **COPY OF THE MEDICAL CERTIFICATE DTD. 5/06/04 ISSUED BY K.V.M.SIDDHA AYURVEDA CHIKITSALAYAM TO THE 1ST PETITIONER.**

EXT.P4: **COPY OF THE OBJECTION FILED BY THE RESPONDENT IN I.A.2522/04 IN O.S.NO.883/02 BEFORE THE PRINCIPAL MUNSIFF'S COURT, NEYYATTINKARA DTD. 29/06/2004.**

EXT.P5: **COPY OF THE COMMON ORDER IN I.A.2522/04 & 2523/04 IN O.S.NO.883/02 OF THE PRINCIPAL MUNSIFF'S COURT, NEYYATTINKARA DATED 24/01/2005.**

EXT.P6: **COPY OF THE JUDGMENT IN C.M.A.NO.8/05 OF THE SUB COURT, NEYYATTINKARA DTD. 31/07/2006.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 25753 OF 2006

= = = = = = = = = = = = = = =

Dated this the 1st day of October, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order of the Munsiff as well as Subordinate Judge, Neyyattinkara whereby the petition to condone the delay in filing the application for setting aside the exparte decree as well as the prayer to set aside the exparte decree were dismissed by the Court below. Defendants 2 to 4 are writ petitioners before this Court as well as before the Court below. The suit was decreed exparte on 26.7.03. There was a delay of 286 days in filing the application. It was contended that she was prevented from appearing the Court on account of ailment for which she had undergone treatment under PW2.

2. On the other hand the plaintiff would contend that she was physically present for a marriage on 15.12.03 and the doctor's certificate do not show that she was totally bedridden. On these grounds the Courts below refused to set aside the exparte decree as well as the petition to condone the delay.

3. Principles of natural justice always demands that as far as possible the matter should be heard and disposed of on merits. The Court has equally cautioned that if there is proof of gross negligence and grave mis-conduct then such indulgence need not be shown. In the decision reported in **Sreedhara Kurup v. Mickel (1968 KLT 599)** this Court held that if there is some movement in the right direction to get the decree set aside and some evidence is let in, then the Court is expected to comply with the principles of natural justice and the inconvenience occasioned to the other side can be compensated by ordering costs.

4. Here, PWs.1 and 2 had been examined. PW2, the doctor had deposed about the factum of treatment. It is true that there was some counter evidence to show that on 15.12.03 she had attended a marriage function but that shall not militate against the whole case, when there is a move in the right direction to get the exparte decree set aside. Therefore, applying the principles laid down in the decision referred to above I am inclined to interfere with the order

passed by the Courts below on condition that the writ petitioners make a payment of Rs.2,000/- to the plaintiff as costs. After the payment of Rs.2,000/- as costs is paid within a period of one month from today before the Court below, the Court below is directed to condone the delay and set aside the exparte decree, restore the suit and then give opportunity to both the sides to proceed with the matter. I further direct that the writ petitioners have to co-operative with the Court for a speedy disposal of the case within a time frame of four months. Needless to say, if the amount is not paid or deposited on or before 1.11.07, the writ petition will stand automatically dismissed.

M.N. KRISHNAN, JUDGE.

ul/-